

CALIFORNIA DEPARTMENT OF INSURANCE
LEGAL DIVISION
Auto Compliance Bureau
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Attorneys for Harry W. Low,
Insurance Commissioner

**BEFORE THE INSURANCE COMMISSIONER
OF THE STATE OF CALIFORNIA**

In the Matter of the Licenses and
Licensing Rights of

OSCAR PADILLA MEXICAN
INSURANCE SERVICES, Inc.,

OSCAR PADILLA,

PETER JOHN PADILLA,

Respondents.

File No. SD 6673-A

FIRST AMENDED ACCUSATION

ORDER TO SHOW CAUSE
Cease and Desist and Monetary Penalty
pursuant to California Insurance Code
section 790 *et seq.*

JURISDICTION:

1. This matter arises under the California Insurance Code, Division 1, Part 2, Chapter 1, Article 6.5 and Division 1, Part 2, Chapter 5, Article 6 which governs unfair practices and the licensing of production agencies, including insurance companies, brokers and agents.

2. The Department of Insurance ("Department") is the agency of the State of California responsible for the licensing and monitoring of the insurance industry, including insurance companies, brokers and agents.

3. Respondents are in the business of placing insurance covering liability arising out of ownership, maintenance or use of an automobile, boat and aircraft in the Republic of Mexico, commonly called Mexican tourist policies. Respondents have been in the business of placing Mexican tourist policies for over 30 years. These policies are written primarily for American citizens who require insurance for a single entry into Mexico for a short period of time and then exit at which point the insurance expires.

4. Respondents also sell discounted insurance policies to motor clubs whose members require insurance coverage for periodic travel back and forth to Mexico. These discounted motor club rates served as the basis for the premium respondents charged all their customers. Respondents offer these discounted multiple entry motor club rates to members and non-members alike. This practice allows respondents to offer rates significantly lower than most of its competitors which has historically generated a high volume of business for respondents.

5. This administrative proceeding before the Department must be conducted in conformity with the provisions of the California Administrative Procedure Act, Government Code section 11500 *et seq.*

6. The Insurance Commissioner (“Commissioner”) may initiate a disciplinary proceeding against a licensee and/or a controlling person of a licensed organization for the grounds set forth in California Insurance Code sections 1668, 1668.5, 1738 and 1739.

7. The Commissioner may impose a civil penalty and shall issue a cease and desist order when a licensee or controlling person has engaged in an unfair method of competition or in any unfair or deceptive act or practice pursuant to Insurance Code section 790 *et seq.*

PARTIES:

8. Oscar Padilla Mexican Insurance Services, Inc. (OPMIS) is licensed by the Commissioner to perform the services of Fire and Casualty Broker-Agent and Surplus Line Broker. Respondent OPMIS' articles of incorporation were originally filed with the

1 office of the Secretary of State on December 27, 1977. Several amendments were
2 subsequently filed, the latest of which, dated September 29, 1989, changed the name of
3 the corporation to Oscar Padilla Mexican Insurance Services, Inc. A document named
4 "Statement by Domestic Stock Corporation" filed November 6, 1995 with the Secretary of
5 State lists OSCAR PADILLA as Chairman, Chief Executive Officer and Chief Financial
6 Officer. In the same document PETER JOHN PADILLA is named a director of the
7 corporation. In various other correspondence and interviews respondent PETER JOHN
8 PADILLA refers to himself as president of OPMIS. Respondents OSCAR PADILLA and
9 PETER JOHN PADILLA both fall within the statutory definition of "controlling person" set
10 out at Insurance Code section 1668.5(b).

11 9. Respondent OSCAR PADILLA is currently licensed by the Insurance
12 Commissioner as a Fire and Casualty Broker-Agent. Respondent OSCAR PADILLA is
13 an endorsee on the Surplus Line license held by OPMIS. Respondent OSCAR
14 PADILLA was initially licensed as a Fire and Casualty Broker-Agent on May 5, 1959. He
15 was licensed as a surplus line broker on October 15, 1959.

16 10. Respondent PETER JOHN PADILLA is currently licensed by the Insurance
17 Commissioner as a Fire and Casualty Broker-Agent. Respondent PETER JOHN
18 PADILLA is an endorsee on the Surplus Line license held by OPMIS. Respondent
19 PETER JOHN PADILLA was initially licensed on December 5, 1981.

20 **ALLEGATIONS:**

21 **SUBJECT:** UNLICENSED TRANSACTORS

22 **APPLICABLE LAW:** California Insurance Code sections 1631, 1668(j), 1668(n), 1668(o),
23 1668(p), 1668.5(a)(2), 1668.5(a)(6), 1668.5(a)(7), and 1668.5(a)(8).

24 **ALLEGATIONS:**

25 11. During the period from approximately April of 1998 until at least June of
26 1999, Respondents relied on a system of several hundred sub-producers at various
27 locations throughout the United States who issued Mexican insurance policies on
28 respondent's behalf, at least one of whom unlawfully transacted the business of

1 insurance without a license issued by the Insurance Commissioner. Respondents had
2 no system to assure that sub-producers were licensed and indeed did not know which if
3 any of their sub-producers had the necessary licensing. Only nine (9) endorsees other
4 than respondents OSCAR PADILLA and PETER JOHN PADILLA are currently
5 authorized to conduct insurance transactions with non-admitted insurers under the
6 umbrella of respondent OPMIS' surplus line license. [CIC§§1631, 1668(n), 1668(o),
7 1668.5(a)(6), and 1668.5(a)(7)]

8 SUBJECT: UNFAIR PRACTICES

9 APPLICABLE LAW: California Insurance Code sections 790.03, 1668(e), 1668(j),
10 1668(n), 1668(o), 1668.5(a)(2), 1668.5(a)(6) and 1668.5(a)(7).

11 ALLEGATIONS:

12 12. During the approximate period of February 2, 1999 until at least June of
13 1999, Respondents engaged in a pattern of unfair and deceptive acts or practices in the
14 business of insurance when it wrote or issued insurance policies on behalf of Noroeste
15 even though it knew Noroeste's authorization to operate as an insurance company had
16 been withdrawn by the Mexican government on December 31, 1998. Respondents
17 further knew that Noroeste would not honor any claims made or policies issued after
18 February 2, 1999. Respondents knew or should have known this information by way of
19 a letter from the designated liquidator of Noroeste received by respondents, or their
20 agent in Mexico, Luis Bobadilla, on or about February 2, 1999. In the letter, the
21 designated liquidator clearly indicated that respondents should issue no policies after
22 February 2, 1999. Despite the February 2, 1999 notice, respondents continued writing
23 policies and allowing their sub-producers to write policies until finally notifying their
24 subproducers in writing to stop issuing Noroeste policies by memorandum dated March
25 17, 1999. In the memorandum, respondents tell their sub-producers to stop writing
26 Noroeste policies effective, not immediately or upon receipt, but rather five days later, at
27 12:01 a.m. on March 22, 1999. [IC § 790.03(d), 1668(j), 1668.5(a)(2), 1765(b)]

28 13. Following March 22, 1999 after instructing its agents to stop writing policies

1 and with the knowledge that Noroeste was insolvent and in liquidation, respondents
2 continued to write and/or place through its sub-producers Noroeste insurance policies
3 until at least June of 1999. Respondents placed one thousand, six hundred and fifty one
4 annual Noroeste policies between February 2, 1999 and March 22, 1999, of which at
5 least one hundred and forty one policies were written at OPMIS offices. At a minimum,
6 respondents wrote an additional one hundred and seventy eight annual Noroeste
7 policies between March 22, 1999 and June 15, 1999. [IC § 790.03(d), 1668(e), 1668(l),
8 1668(j), 1668.5(a)(1), 1668.5(a)(2), 1765(b) and 1765(f)]

9 14. As a result of the failure of Noroeste a total of approximately 3385
10 policyholders have claims that remain unpaid and/or unearned premiums that were not
11 returned for a total monetary loss to policyholders estimated at \$750,292.18. [IC §§
12 790.03(d), 1668(j), 1765(f)]

13 SUBJECT: PLACED MEXICAN TOURIST INSURANCE BUISNESS
14 THROUGH AGENCY WITHOUT SURPLUS LINE LICENSE
15 APPLICABLE LAW: California Insurance Code sections 1668(n) 1668(o),
16 1668.5(a)(2), 1668.5(a)(6), 1668.5(a)(7), 1738, 1739, 1764.2,
17 1765(b) and 1765(f).

18 ALLEGATIONS:

19 15. During the period of on or about February 26, 1999 until approximately
20 August 1, 1999 Respondents wrote Mexican tourist insurance policies through UMGA
21 West which did not possess a surplus line license. UMGA West is licensed as a Fire
22 and Casualty Broker Agency. UMGA West was acting in the capacity of managing
23 general agent for Comercial/America. A surplus line license issued by the Department
24 of Insurance is required to place Mexican tourist insurance policies for Mexican
25 insurance companies. Respondents entered into a written contract on February 26,
26 1999 to act as agent of UMGA West for the purpose of soliciting Comercial/America
27 Mexican insurance policies, issuing binders for coverage and providing certificates of
28 insurance as well as other acts related to the issuance and servicing of Mexican

1 insurance policies. At a minimum respondents placed one million, one hundred thirty
2 eight thousand, five hundred seventy six dollars and 23 cents (\$1,138,576.23) in
3 premium through UMGA West. [IC §§ 1668(n),1668(o), 1668.5(a)(6), 1765(b)]

4 **STATEMENT OF CHARGES FOR CEASE AND DESIST**

5 **AND MONETARY PENALTY ORDER, AND**

6 **STATEMENT OF POTENTIAL LIABILITY, PURSUANT TO CIC § 790 et seq.**

7 16. The facts alleged in Paragraphs 11 through 15 constitute the statement of
8 charges of the Order to Show Cause for Cease and Desist and Monetary Penalty
9 pursuant to CIC section 790 et seq. The facts alleged in those paragraphs, both
10 individually and/or jointly constitute grounds for the Commissioner to issue the Order
11 requested in the below Petition for Discipline and Order to Show Cause to Respondents.
12 Each respondent is potentially liable under California Insurance Code section 790.035
13 for a monetary penalty of \$5,000 for each alleged act of issuing a policy between
14 February 2, 1999 and March 22, 1999. In addition, each respondent is potentially liable
15 for a monetary penalty of \$10,000 for each alleged willful act of issuing a policy after it
16 had notified its agents to stop writing policies on March 22, 1999.

17 **CAUSE FOR DISCIPLINE PURSUANT TO CIC §§ 1668, 1668.5, 1738 AND 1739**

18 17. The facts alleged in Paragraphs 11 through 15 both individually and/or jointly
19 constitute grounds to revoke Respondents licenses pursuant to CIC §§ 1668, 1668.5,
20 1738 and 1739.

21 **PETITION FOR DISCIPLINE AND ORDER TO SHOW CAUSE**

22 The Department prays for issuance of an Order that:

- 23 1. Revokes the license and licensing of Respondent OPMIS, Respondent
24 PETER JOHN PADILLA and Respondent OSCAR PADILLA,
25 2. Requires Respondent OPMIS, Respondent PETER JOHN PADILLA and
26 Respondent OSCAR PADILLA pay a civil penalty to the State of California
27 in the amount of ten million thirty five thousand dollars (\$10,035,000).
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Dated: _____.

HARRY W. LOW
Insurance Commissioner

By _____
James Stanton Bair III
Staff Counsel